IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1272 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALPESH AMRUTLAL PARIKH

Versus

BANK OF INDIA LTD

Appearance:

1. Special Civil Application No. 1272 of 2001

MR PT JASANI for Petitioner No. 1

MS LILU K BHAYA for Respondent No.1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/09/2002

ORAL JUDGEMENT

Rule. Ms Lilu K Bhaya, learned counsel waives service of Rule for the respondents.

2. The petitioner opted for voluntary retirement under the voluntary retirement scheme and accordingly retired on 31st December, 2000. The grievance raised by

the petitioner in the present petition is that he is not paid all his retiral dues on the ground that the respondent-bank has to make some recovery in respect of a transaction where the petitioner was a guarantor. It is submitted that such claim of the bank cannot be adjusted against the retiral dues of the petitioner.

3. The stand of the respondent-bank is that the petitioner was a guarantor for the amounts borrowed by his father from the respondent-bank and that since the amounts are outstanding for the said borrowings (for which the bank has filed a Civil Suit), the bank is entitled to recover the amount from the petitioner otherwise the bank's interests will be jeopardized. Admittedly, the total amount that the bank is entitled to recover from the petitioner is less than the petitioner's retiral dues.

4. There is also a dispute between the parties about the amounts payable by the petitioner to the respondent-bank and the amounts payable by the respondent-bank to the petitioner more particularly about the rate of interest and the interest amount. As regards the controversy about the rate of interest, while the bank submits that the interest to be paid to the petitioner would be 4% p.a. as interest on savings account deposits, the petitioner contends that the respondent-bank itself has issued the fixed deposit receipt for an amount of Rs.3,69,188/- towards the ex-gratia amount as a part of the retiral dues and that the rate of interest on the said deposit is 10%. A photostat copy of FDR No. 000589 dated 8.1.2001 valid for a period of five years is placed on the record of this petition.

5. It is not for the Court to entertain such disputes in a petition under Article 226 of the Constitution, but when the petitioner is liable to pay the amount for which he was a guarantor in respect of the loan taken by his father and the respondent bank has also to give the petitioner his retiral dues, it would be just and proper to direct the respondent-bank and the respondent-bank is accordingly directed, to pay the petitioner the admitted dues by quantifying the retiral amounts payable by the respondent-bank to the petitioner as on the date of retirement (31st December, 2000) and deducting therefrom all the amounts payable by the petitioner to the respondent-bank as on the same day (31st December, 2000) and thereafter to pay the difference to the petitioner. The respondent-bank shall pay such differential amount with interest thereon at the

rate of 10% p.a. from 1st January, 2001 in the form of an FDR with interest at 10% p.a. for a period of five years from 1.1.2001 within one week after the petitioner returns the original FDR to the respondent-bank which is hereby ordered to be cancelled and thereupon the Civil Suit filed by the bank shall also be disposed of by the Civil Court.

7. The petition is disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-